
SKILL, CHANCE, AND THE CONSTITUTIONAL RECKONING IN INDIA'S ONLINE GAMING TAX WAR

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I. Introduction: The Shot Heard Round the Gaming World

The Directorate General of GST Intelligence (DGGI) issued a show cause notice to Gameskraft Technologies Private Limited on 23 September 2022. The Bengaluru-based company operates an online rummy platform which received a tax demand of ₹21,000 crore for unpaid GST. The figure was staggering, the largest single tax demand in the history of the Indian Republic. The case exceeded normal boundaries because its essential legal foundation established rummy as a gambling activity despite the Supreme Court's 1968 decision that recognized rummy as a skill-based game.¹

Within months, similar demands had been served on Dream11, MPL, A23 Games, PokerBaazi, Junglee Rummy, and dozens of other platforms. The total demands surpassed ₹1.5 lakh crore. Several startups contemplated relocating offshore. The digital entertainment industry in India, which has the fastest expansion rate, generates annual revenues over ₹16,000 crore and experiences a 27% annual growth rate, faced a tax obligation that surpassed their total profits since they started operations.

The Gameskraft controversy, according to this paper, represents a different story because it does not involve video games as its main focus. The story shows how an administration that seeks more revenue treats a constitutional boundary as a minor financial problem which they can solve through forceful policing and new law changes. The upcoming Supreme Court judgment which the court will announce after its 8 August 2025 proceedings will determine both tax regulations for a particular industry and the level of legal authority that Indian authorities must show toward their established legal principles.

¹ State of Andhra Pradesh v. K. Satyanarayana & Ors., AIR 1968 SC 825; 1968 SCR (2) 387.

II. Sixty Years of Jurisprudence the DGGI Chose to Ignore

A. The Constitutional Foundation: Chamarbaugwala (1957)

The Supreme Court's Constitution Bench established the legal framework which regulates all gaming activities in India through its decision in *State of Bombay v. R.M.D. Chamarbaugwala*.² The Court established a constitutional boundary which created essential legal consequences through its judgment. The court determined that gambling activities exist outside of all commercial activities because they generate no economic value while creating major social harm. The law protects activities which depend mainly on skill because they qualify as legitimate trade and commerce under Article 19(1)(g). The Court established a doctrinal test which evaluates the case according to the "predominance test" because it requires assessment of whether skill determines final results instead of complete assessment of chance existence.

B. Rummy as a Game of Skill: Satyanarayana (1968)

The Supreme Court used the predominance test to evaluate rummy for the first time in *State of Andhra Pradesh v. K. Satyanarayana*³ which occurred ten years after the *Chamarbaugwala* decision. Justice Hidayatullah, writing for the Court, held that rummy "requires a certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards." The conclusion was unambiguous: rummy is "mainly and preponderantly" a game of skill.

Two elements of the judgment bear particular emphasis in the present context. The Court ruled that rummy becomes a gambling activity only when players bet their money on the game because the game maintains its original character through all its monetary aspects. The Court used rummy as an example to reach its decision because it extended its reason to other games. The underlying doctrinal move, classifying games by the predominance of skill over chance, and protecting skill-based games from punitive regulation, established a constitutional law principle, which did not apply only to one specific card game.

² *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699; 1957 SCR 874. Decided by a Constitution Bench of five judges on 9 April 1957.

³ *State of Andhra Pradesh v. K. Satyanarayana*

C. The Lakshmanan Refinement (1996)

The Supreme Court established its most accurate definition of the predominance test through their decision in *Dr. K.R. Lakshmanan v. State of Tamil Nadu*.⁴ The Court determined that a game of skill requires players to achieve success through their superior knowledge and training and attention and experience and adroitness. The Court established that the word "mere" in gaming statutes which use the term "mere skill" includes all games which require skill as the dominant ability for success even when the game includes elements of chance.

D. The Online Dimension: High Court Consistency

The transition of rummy and fantasy sports to online platforms did not disturb this jurisprudential consensus. The skill-chance analysis applies to online formats according to both the Bombay High Court and the Rajasthan High Court. The Bombay High Court⁵ specifically addressed Dream11's fantasy cricket product and concluded that user decisions, selecting players, forming teams, applying sports knowledge, were the primary determinants of outcome, not the unpredictable performance of real athletes on any given day. The physical-to-digital migration changes the delivery mechanism, not the legal character of the activity.

III. The GST Framework and the DGGI's Legal Theory

A. The Architecture of GST for Gaming

The Goods and Services Tax regime which started on 1 July 2017 included particular rules that applied to all gaming transactions. The CGST Act Schedule III identifies activities which do not qualify as goods or service supplies thus they remain outside the GST system.⁶ The entry 6 definition included all "actionable claims" except for "lottery and betting and gambling" activities. An actionable claim from Section 3 of the Transfer of Property Act

⁴ *Dr. K.R. Lakshmanan v. State of Tamil Nadu & Anr.*, AIR 1996 SC 1153; (1996) 2 SCC 226. Decided on 12 January 1996 by Kuldeep Singh, B.L. Hansaria and S.B. Majmudar JJ.

⁵ *Gurdeep Singh Sachar v. Union of India & Ors.*, Criminal Public Interest Litigation No. 16 of 2019 (Bombay High Court), decided on 30 April 2019, per Ranjit More and Bharati Dangre JJ.

⁶ Central Goods and Services Tax Act, 2017, Schedule III, Entry 6. The text excludes from the definition of "supply" all actionable claims except lottery, betting and gambling. ⁷ Transfer of Property Act, 1882, Section 3 defines an actionable claim as a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in possession, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

1882⁷ exists as a legal entitlement which permits someone to receive a future performance.

The logic behind the structure showed that players in a skill-based game had the right to make claims against the platform through their participation in the prize pool. The claim becomes valid because the player activity requires skill to perform which makes it different from gambling activities according to Entry 6 which defines its main category. The platform service constitutes taxable supply which includes all infrastructure components and matchmaking services and software that the operator delivers while 18% GST applies to these services. Gameskraft and other operators built their platforms to collect platform fees ranging from 5% to 10% of total stakes while they paid 18% GST on these fees and maintained 90% to 95% of funds in escrow accounts which third-party banks controlled and the platform could not access.

B. How the DGGI Dismantled the Architecture

The DGGI's demand notice inverted this structure completely because it used Rule 31A of the CGST Rules⁷ to determine the taxable value of "betting, gambling, or lottery" supplies through their entire player deposit system. The demand was arithmetically lethal because 28% on the gross deposit pool created a tax liability that exceeded 280% of the platform's total revenue. Gameskraft had to pay ₹280 in taxes for every ₹100 it earned.

Rule 31A serves as a valuation rule rather than a classification rule. The system shows you the process to determine tax obligations for a supply which already has been classified as gambling. From the Supreme Court's sixty-year record of decisions people will understand that rummy requires proof of gambling status before it can be classified as such. The DGGI's notice assumed its conclusion: it treated rummy as gambling before a single legal argument had been made, then used a valuation rule to generate a demand that would extinguish the industry it was taxing.

There is a further structural problem. The prize pool funds held by Gameskraft in escrow are not the platform's money. The platform never had beneficial ownership of those funds, they were the contributions of players, held in trust, and payable to winners. The platform's financial function gets misrepresented through the incorrect identification of the platform as the supplier who generates an actionable claim from these funds. The platform operates as a service

⁷ Central Goods and Services Tax Rules, 2017, Rule 31A. This rule prescribes the method for determining the value of supply in case of lottery, betting, gambling and horse racing.

provider that functions as a link between users and their betting activities.

IV. The Karnataka High Court: Sixty Years, Applied

Gameskraft challenged the show cause notice before the Karnataka High Court. On 11 May 2023, a single judge delivered a 150-page judgment which he declared "illegal, arbitrary and without jurisdiction" by ruling against it.⁸ The ruling applied the Chamarbaugwala-Satyanarayana-Lakshmanan framework to the department which had chosen to ignore those decisions.

The Court established its main doctrinal decision which declared that the legal terms "betting" and "gambling" used in Entry 6 of Schedule III function as *nomen juris* because their legal definition exists through constitutional interpretation and cannot be modified through executive authority. The DGGI wrongfully classified online rummy as gambling because Satyanarayana had established it according to binding authority as non-gambling. A Supreme Court judgment remains superior to any tax notice.

The Court found that Gameskraft's function as an escrow holder for prize pool funds proved to be no more than an "supply" of actionable claims. The platform provided a service that included hosting, matchmaking, and infrastructure but did not offer a gambling product. The only taxable supply was the platform fee, on which Gameskraft had been paying the correct 18% GST throughout. The court decided that Rule 31A(3) does not apply to skill-based games because its subordinate legislative instrument cannot change the classification system established by the parent statute.

The Union of India filed a Special Leave Petition before the Supreme Court, which in September 2023 stayed the High Court's judgment -- not on the merits but to prevent the decision from being used as a precedent by other litigants pending comprehensive resolution. The government received its legislative mandate through the stay which emerged as the executive branch's operational signal to begin enacting new laws.

V. The 2023 Amendments: Legislative Fiat Dressed as Clarification

⁸ Gameskraft Technologies Private Limited & Ors. v. Directorate General of Goods and Services Tax Intelligence & Ors., Writ Petition No. 19570 of 2022 (Karnataka High Court), decided on 11 May 2023

A. The Content of the Amendments

The GST Council did not wait for judicial resolution. The Central Goods and Services Tax (Amendment) Act, 2023 which Parliament enacted after the 50th and 51st meetings in July–August 2023 received Presidential assent on 18 August 2023 and came into force on 1 October 2023.⁹¹⁰

The creation of a new statutory category "specified actionable claims" served as the main element in this development which defined claims against betting operations and casinos and gambling activities and horse racing and lottery systems and all types of "online money gaming" activities. The final category defined any online game which required players to make a deposit in order to take part "in any game of chance for winning any prize, money or otherwise." Entry 6 of Schedule III was simultaneously amended to carve out specified actionable claims from the exclusion zone, and a new Rule 31B was issued fixing the taxable value at 100% of the gross deposit amount for all online money gaming.

The law eliminated the tax classification that distinguished between skill-based games and chance-based games. From 1 October 2023, rummy and poker and chess and fantasy sports and slot machines were to receive equal treatment because all of these activities would face 28% GST on every rupee deposited, which would occur without regard to the skill content of the underlying game.

B. The 'Clarificatory' Claim and Its Falsity

The government presented an additional assertion which transformed a proposed legislative amendment into a constitutional state of emergency because it claimed that all 2023 changes only served to clarify existing legal matters which had existed since the start of GST on July 1 2017. Through its logic from 2017 until 2023 the show cause notices qualified as tax restoration under preexisting legal frameworks which had sustained throughout the period. Therefore the

⁹ The Central Goods and Services Tax (Amendment) Act, 2023, received Presidential assent on 18 August 2023 and was notified to come into force on 1 October 2023 vide notification S.O. 4228(E). An equivalent amendment was made to the Integrated Goods and Services Tax Act, 2017. New Rule 31B was simultaneously inserted into the CGST Rules.

¹⁰ Reports of the 50th GST Council Meeting held on 11 July 2023 and 51st GST Council Meeting held on 2 August 2023. Press releases are available on the GST Council website at: <https://gstcouncil.gov.in>

total demand reached ₹1.5 lakh crore.

The claim of retrospective clarification is, on any serious legal analysis, untenable. Three distinct arguments establish its falsity.

The internal deliberative history of the GST Council serves as the first dispositive evidence of the case. The Council established a Group of Ministers to investigate online gaming taxation which spent more than two years before reaching a final recommendation. The entire process became necessary because the legal situation remained uncertain throughout its duration. The ministerial task force exists to address questions which have remained without proper resolution since their inception.¹¹

The amendments created fresh legal definitions through their introduction of two new terms which describe "specified actionable claims" and "online money gaming". The government claim of existing clarity before parliament created its own law for investigation purposes.

The established principles of statutory interpretation require that any taxation provisions which contain unclear language must be resolved to benefit taxpayers according to the *in dubio contra fiscum* rule. The Supreme Court has applied this rule which the court established in *Commissioner of Income Tax v. Vegetable Products Ltd.*¹² The pre-2023 position was, at minimum, genuinely contestable — that is precisely why it was litigated before multiple high courts and why the government itself sought legislative intervention. The companies which paid 18% GST on platform fees operated based on a legal interpretation which judges had approved as correct. The retroactive penalties for their compliance with laws which existed at that time will punish them for behaving in ways which any reasonable person would see as lawful according to the statute.

VI. The Supreme Court: Constitutional Challenges and the Government's Defence

A. The Consolidated Proceedings

The Supreme Court combined the Gameskraft SLP with more than seventy other petitions

¹¹ The GST Council constituted a Group of Ministers (GoM) on online gaming, casinos and horse racing in May 2021, chaired by the Chief Minister of Meghalaya. The GoM deliberated for over two years before submitting its report in December 2022, which was subsequently considered at the 50th GST Council meeting in July 2023.

¹² *Commissioner of Income Tax v. Vegetable Products Ltd.*, (1973) 88 ITR 192 (SC). The Supreme Court held that if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted.

which resulted in an enormous tax case that became the biggest tax battle in Indian legal history. Senior Advocates Harish Salve and Abhishek Manu Singhvi appeared for the gaming companies; Additional Solicitor General N. Venkataraman represented the Union.

B. The Constitutional Challenges

The petitioners advanced three interlocking constitutional challenges. The most analytically powerful targets Article 14. The amendments treat games of skill and games of chance as identical for tax purposes which leads to the classification of different activities as matching each other because there is no logical connection between the classification and the tax goal. The constitutional rationale for taxing gambling at a punitive rate is its social harmfulness; but that rationale cannot justify treating rummy or fantasy sports the same way, since the Supreme Court has held these to be constitutionally protected, socially legitimate activities. The test of *Ram Krishna Dalmia v. Justice Tendolkar*.¹³ The Allahabad High Court has admitted a writ petition making this precise challenge.

The Article 19(1)(g) challenge proceeds simultaneously with its legal proceedings. The *Chamarbaugwala* ruling¹⁴ states that skill-based gaming functions as constitutionally protected commerce which means that any tax exceeding 100% of an operator's total revenue would act as a business destruction tax instead of a legitimate regulatory measure. Indian constitutional law establishes a clear standard which differentiates between taxes that regulate and taxes that extinguish economic activities.¹⁵ A levy calibrated at destruction is not a tax; it is a prohibition through the fiscal mechanism. The constitutional permissibility of such prohibition requires a far higher justification than the government has provided.

The third challenge targets Section 15(5) of the CGST Act, which empowers the Central Government to establish taxable value through notification after receiving GST Council recommendations.¹⁶ The petitioners contend that this practice which delegates fundamental

¹³ *Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors.*, AIR 1958 SC 538; 1959 SCR 279. Decided on 28 March 1958.

¹⁴ *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699, supra note 1. The Court held that gambling is *res extra commercium*, i.e., it lies outside trade and commerce and is not protected under Article 19(1)(g) or Article 301 of the Constitution.

¹⁵ *R.C. Cooper v. Union of India*, (1970) 1 SCC 248 and *State of Tamil Nadu v. K. Sabanayagam*, (1998) 1 SCC 318, recognising the principle that a tax that extinguishes or destroys a trade or business may amount to a regulatory prohibition and must satisfy a higher constitutional standard.

¹⁶ Central Goods and Services Tax Act, 2017, Section 15(5) empowers the Government, on the recommendation of the GST Council, to prescribe the value of supply of goods or services or both of any class in any specified

lawmaking work to another party violates constitutional principles.¹⁹ Rule 31B, issued under this delegation, determines both the tax base and the effective economic fate of an entire industry. The executive branch needs specific guiding principles which Parliament must develop because these two decisions belong to the legislative domain. The power to change taxable value through fiscal statute amendment is granted without proper constitutional requirements which control the exercise of authority.

The petitioners have additionally relied on *Sunrise Associates v. Government of NCT of Delhi*¹⁷ for the proposition that no actionable claim arises from a game of skill at all because an actionable claim requires an existing right against an ascertained person and the uncertain outcome of a skill game does not generate such a right before the game concludes. The argument proves its correctness because it removes both the basis for valuation and the entire taxable event.

C. The Government's Defence

The Union's main case which the ASG presents argues that any game which requires players to make money bets on unpredictable results should be classified as betting according to its broad financial definition. The company uses *Skill Lotto Solutions Pvt. Ltd. v. Union of India*¹⁸ as its legal basis because the Supreme Court approved 28% GST on lottery tickets which establishes that all wager amounts should be treated as "consideration" under Section 15(1) of the CGST Act regardless of their skill component.

The government has not provided sufficient explanation to support its decision to depend on Skill Lotto²¹ at this point. Legal and empirical evidence shows that lotteries exist as games of chance because their results depend solely on random drawing. The Chamarbaugwala-Satyanarayana framework specifically and deliberately distinguishes such activities from games in which skill predominates. The citation of Skill Lotto to demonstrate that skill-based games require lottery-style taxation shows an assumption of the contested point. The Skill Lotto program established taxation rates and tax bases for activities which had already received

circumstances. The delegation of this power to fix the tax base is the subject of constitutional challenge in the consolidated proceedings before the Supreme Court.

¹⁷ *Sunrise Associates v. Government of NCT of Delhi & Ors.*, (2006) 5 SCC 603; AIR 2006 SC 1908. Decided on 28 April 2006 by a Constitution Bench. The Court held that a lottery ticket represents a chance or right to a conditional benefit, constituting an actionable claim.

¹⁸ *Skill Lotto Solutions Pvt. Ltd. v. Union of India & Ors.*, Writ Petition (Civil) No. 961 of 2018, decided on 3 December 2020; reported as 2020 SCC OnLine SC 990

classification as non-skill-based gaming. The court did not establish that games of skill could receive lottery-style taxation treatment. The bench reportedly pressed the ASG on this elision.

VII. Towards a Rational Tax Framework: Lessons from Comparative Practice

A. The Gross Gaming Revenue Model

The constitutional critique advanced in Section VI identifies what the current framework gets wrong. This section investigates what a legitimate alternative solution would look like through its demonstration that the government can reach its revenue goals while operating within constitutional boundaries.

The Gross Gaming Revenue (GGR) model serves as the primary international standard which all licensed gaming operators must follow when they pay taxes. Under this approach, the tax base is the operator's net revenue, total wagers received less total prizes paid out, rather than gross deposits. The British system implements this model through its Gambling Licensing and Advertising Act 2014 which uses the Remote Gaming Duty system to charge

21% on GGR.¹⁹ Malta operates one of the oldest online gaming licensing systems in the European Union which charges operators GGR taxes between 5% and 8% based on their game category under the Malta Gaming Authority B2C license system.²⁰

The GGR model has three properties which the existing Indian system currently lacks. The tax system determines business taxes based on their economic activities because operators pay taxes according to their actual earnings instead of temporary player funds. The system generates revenue through a steady stream which allows governments to estimate their income but prevents businesses from leaving the market. The system has demonstrated its ability to generate consistent income through two decades of testing in various countries. The UK remote gaming duty collected about £3.4 billion during the 2022-23 period from a market that was smaller than the Indian market.

¹⁹ HM Revenue & Customs, "Remote Gaming Duty" (HMRC, 2023). The Remote Gaming Duty at 21% applies to the gross gambling yield (stakes minus prizes paid).

²⁰ Malta Gaming Authority, "Gaming Tax Framework" (MGA, 2023). Under the MGA B2C licence, operators pay GGR-based taxes ranging from 5% to 8% depending on game category.

B. Application to the Indian Context

The GGR model functions according to its Indian framework implementation. The platform fee shows the operator's actual revenue which they receive from game hosting activities. The existing 18% GST rate on skill-based gaming platforms is justified because it recognizes gaming platforms as actual service providers who deliver their services. The government can establish a distinct elevated tax rate between 25% and 30% to apply on platform fees which generate GGR from real-money gaming since this approach enables higher revenue collection without creating an excessively imbalanced tax framework.

The framework would solve the retrospective issue because it would establish a new tax base through its prospective changes. Backward claims for the time before the changes occurred cannot be made because the tax base change has been declared as a future event.

The only legally defensible conclusion states that companies which paid 18% GST on platform fees were compliant during that time.

VIII. Conclusion

The Gameskraft controversy presents the Supreme Court of India with a question that has implications far beyond online gaming: whether constitutional categories that the Court has spent six decades carefully constructing can be dissolved by administrative pressure followed by legislative redrafting.

The skill-chance distinction exists as an essential legal principle because constitutional adjudication requires courts to assess state power based on activity characteristics. The state possesses the authority to limit gambling because gambling exists outside commercial activities and generates no societal benefits which subsequently enables them to treat chess and rummy as gambling through classification changes. The ability to establish new taxes through fiscal legislation does not create an expansion of taxing authority but functions as a method to achieve prohibited activities which would require unconstitutional means.

The government asserts that the 2023 amendments serve only to clarify existing laws, which should receive brief judicial examination. The amendment constitutes a new legal definition which establishes taxable categories while imposing retroactive obligations that amount to six years of past financial responsibility on an industry that maintained compliance with court-

established standards. The legislation creates a new legal framework which retroactively changes existing laws according to constitutional principles that protect parties who base their business operations on established legal norms.

The Supreme Court decision will create a clear message for regulated industries in India which states that government regulations will override any court rulings that support their operations. The outcome would destroy the basic trust that investors have in India as a digital economy hub because it needs to develop such confidence.

The Court will maintain its constitutional authority over skill-chance assessment when it rules against the retroactive application of Rule 31B to skill-based gaming and establishes that actual operator revenue will determine the tax base while it rejects the 2023 amendments' clarificatory characterisation. The sixty years of constitutional jurisprudence will be confirmed as binding law while India's digital economy will operate under unchangeable legal standards.